

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

[UNDER SEAL]

)

C.A. No. 06-CA-12237-RZ

)

Plaintiffs,

)

v.

)

NOTICE OF INTERVENTION  
AND MOTION FOR UNSEALING

)

[UNDER SEAL]

)

Defendants

)

)

FILED IN CAMERA AND UNDER SEAL

PURSUANT TO 31 U.S.C. § 3730(b)(2) and Local Rule 5.4G

-NOT FOR POSTING ON PACER-

ANDREW M. CUOMO, ATTORNEY  
GENERAL OF THE STATE OF NEW YORK

120 Broadway New York, New York 10271  
(212) 416-8173  
(212) 416-6589

Attorney for State of New York

John F. Carroll  
Assistant Attorney General  
(Admitted Pro Hac Vice)

Of Counsel

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA ET AL.	)	C.A. No. 06-CA-12237- RZ
EX REL. JAY CARCIERO and	)	
JOHN CARCIERO,	)	NOTICE OF INTERVENTION
	)	AND MOTION FOR UNSEALING
Plaintiffs,	)	
v.	)	
	)	
SODEXHO ALLIANCE SA, and	)	
SODEXHO MARRIOTT SERVICES,	)	
INC.,	)	<u>FILED IN CAMERA</u>
	)	<u>AND UNDER SEAL</u>
Defendants.	)	
	)	
	)	
	)	

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THE STATE OF NEW YORK'S NOTICE OF ELECTION TO INTERVENE  
AND MOTION FOR UNSEALING

1. Pursuant to N.Y. State Finance Law section 190(2)(b), the State of New York notifies this Court that it hereby intervenes in this action.
2. New York further notifies the Court that the parties have reached a settlement of this matter, upon the terms set forth in the accompanying Settlement Agreement. Pursuant to the Settlement Agreement, Sodexo and related entities now have twenty days to fund the settlement, and pay Relators' counsel fees, after which New York will make the specified disbursement of Relators' share of the settlement proceeds.
3. New York further notifies the Court that the parties agree, as an essential component of the settlement, that the matter should remain under seal, pending the payment and disbursement of all funds.

4. The Parties respectfully request, therefore, that the Court maintain the seal for the present time, until the parties have completed the payment protocol specified in the Settlement Agreement.

5. After all payments are made, the parties will file a joint Stipulation of Dismissal (which we anticipate will be joined in by Massachusetts, Texas, and the United States), along with a proposed order unsealing appropriate items in the record.

Dated: June 11, 2010

Respectfully submitted,

ANDREW M. CUOMO, Attorney General  
of the State of New York



By: John F. Carroll  
Assistant Attorney General  
(Admitted Pro Hac Vice)  
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Attorney for State of New York

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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IN THE MATTER OF AN INVESTIGATION BY ATTORNEY  
GENERAL ANDREW CUOMO OF CERTAIN PRACTICES  
IN THE FOOD SERVICE AND FACILITIES MANAGEMENT  
INDUSTRY

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# 10-037

Settlement Agreement

In October 2008, in furtherance of a qui tam action described more fully below, the Office of the Attorney General of the State of New York ("OAG") began an industry-wide investigation into certain practices in the food service and facilities management industry pursuant to the provisions of § 63(12) of the Executive Law, Article 22-A of the General Business Law, and New York's False Claims Act (N.Y. State Finance Law §§ 187-194).

This Settlement Agreement ("Agreement") is entered into by the State of New York, acting through OAG (collectively, the "State"), Sodexo, Inc., including any and all predecessor and successor entities, parents, subsidiaries, divisions, and affiliates as well as all former and current officers, directors, employees and agents of these entities (collectively, "Sodexo")<sup>1</sup>, and John Carciero and the Estate of Jay Carciero (collectively, "Relators"), all of whom hereafter are jointly referred to as the "Parties."

I. Background

1. Sodexo, Inc. is a leading integrated food and facilities management services company in the United States, Canada and Mexico, with \$7.7 billion in annual revenue and 120,000 employees. Sodexo, Inc. serves more than 10 million customers daily in corporations, health care, long term care and retirement centers, schools, college campuses, government and remote sites.
2. Sodexo, Inc. is incorporated in Delaware, headquartered in Gaithersburg, Maryland, and is a subsidiary of Sodexo SA which is headquartered in Paris, France.
3. Sodexo's broad spectrum of services includes food services, vending, laundry, maintenance, grounds keeping and environmental services.

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<sup>1</sup> In 2008, all related entities changed the spelling of "Sodexho" to "Sodexo," dropping the "h".

4. Sodexo's primary market segments and their primary divisions are as follows:  
Education (Campus Services, School Services and Education Facilities); Healthcare (Hospitals, Laundry and Senior Services); Corporate Services (Vending, Cafés, Cafeterias and Catering); Government Services; and Remote Sites.
5. On December 14, 2006, a qui tam action was filed in the United States District Court for the District of Massachusetts, captioned United States of America ex rel. Jay Carciere and John Carciere v. Sodexo Alliance SA, et al., Docket No. 06-CA-12237-NG (Zobel, J.) (the "Qui Tam Action"). This complaint was putatively on behalf of the United States. It also asserted claims for retaliation and retaliatory discharge under 31 U.S.C. 3730(h).
6. On December 28, 2007, Relators filed their First Amended Complaint (as of right) adding Massachusetts, New York and Texas as parties, and various claims.
7. On May 26, 2009, Relators moved to file a Second Amended Complaint, adding claims and other States, and the application was denied on June 5, 2009.
8. The United States, the Commonwealth of Massachusetts, and the State of Texas have each declined to intervene in the Qui Tam Action.
9. In November 2008, OAG commenced an investigation referred to as In the Matter of the Investigation of Certain Practices in the Food Service and Facilities Management Industry (the "OAG Investigation"). In connection with this industry-wide investigation, Sodexo, Inc. has responded to several subpoenas served by OAG. Sodexo has cooperated fully with the OAG's Investigation.

## II. Findings

10. OAG contends that during the period January 1, 2004 through December 31, 2009 (“Relevant Period”), Sodexo failed to disclose to certain clients rebates awarded by its food vendors and suppliers to Sodexo for food purchased on clients’ behalf, or failed to fully credit customer accounts, under circumstances where Sodexo was obligated to do so.<sup>2</sup> In some circumstances this allowed Sodexo to reap financial benefits by receiving so-called “off-invoice” rebates where it was improper to retain the money. As discussed below, by failing to fully disclose the off-invoice rebates to certain clients, Sodexo reduced its costs for food and services provided to those clients, but denied those clients the full benefit of the cost reductions. Based on the terms of contracts with those clients and, in some situations, state regulations (which required use of a form agreement specifying that all charges to schools “must be net of rebates”), the off-invoice rebates should have benefited the clients - not Sodexo.
11. Sodexo enters into contracts to provide food services on the premises of its clients in cafeterias and other on-site facilities. Sodexo’s general business model is to assume responsibility for certain aspects of its clients’ food-service operations, which can include menu planning, food ordering, preparation, cooking, and service. Sodexo essentially sells its management expertise to its clients who, in turn, rely on Sodexo to act truthfully and in accordance with the terms of the client contract.
12. According to Sodexo, among the items of added value it provides to clients is that it carefully vets the products it purchases on their behalf. When Sodexo enters into an agreement with a client to provide procurement services and purchase products for its clients, those clients rely on Sodexo’s expertise in selecting products. Oftentimes Sodexo receives off-invoice rebates from vendors as a result of client purchases. Although rebates generally are referenced in agreements between Sodexo and its clients, in those contracts in which Sodexo retains rebates, Sodexo does not routinely disclose the amounts of the rebates paid, nor which vendors pay rebates to Sodexo.

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<sup>2</sup> Not all client agreements obligated Sodexo to disclose or reimburse rebates, indeed, numerous agreements expressly permitted Sodexo to retain these funds.

13. During the Relevant Period, Sodexo provided food and/or facilities management services to thirty-five kindergarten through 12th grade school districts or individual schools throughout New York State, as well as various State University of New York (“SUNY”) campuses.
14. Part of the OAG Investigation focused on kindergarten through 12th grade schools which received public funding from the National School Lunch Program (“NSLP”) and which were serviced by Sodexo during the Relevant Period (“Qualifying K-12 schools”).
15. NSLP is a federally-funded entitlement grant program that provides money and United States Department of Agriculture (“USDA”) commodities to Qualifying K-12 schools. The USDA administers the NSLP through its Food and Nutrition Service. USDA contracts with the New York State Education Department (“NYSED”) to implement NSLP at Qualifying K-12 schools in New York State.
16. During the Relevant Period, New York’s regulations mandated the use of form contracts which required food service management companies to pass through the cash value of rebates to the local school authority (whether individual school or district) and to clearly identify the value of rebates on “Operating Statements.”
17. Operating Statements are required by NYSED regulations to clearly show all credits, discounts, and rebates.
18. The OAG Investigation determined that contrary to regulations, the Operating Statements submitted to certain Qualifying K-12s did not always fully reflect rebates, or included impermissible charges.
19. As a result, some Qualifying K-12 schools paid more than they should have for food and supplies.
20. For example, Sodexo was hired by The Children’s Village, a New York treatment center for at-risk-youth and one of the Qualifying K-12 schools, for food management services during the Relevant Period.

21. The Children's Village officials told OAG investigators that they were repeatedly reassured by Sodexo that it only charged them the price Sodexo actually paid for goods it purchased on their behalf. However, OAG's examination of Sodexo's records revealed that Sodexo failed to reimburse The Children's Village for the full amount of off-invoice rebates that Sodexo received from vendors and made other overcharges.
22. After the errors at The Children's Village were uncovered by the OAG Investigation, Sodexo examined other kindergarten through 12th grade school accounts, and identified two other Qualifying K-12 schools which were also overcharged: Abbott House and the Buffalo chapter of the Jewish Child Care Association ("JCCA"). Sodexo also promptly agreed to reimburse all three of these schools. An examination of the circumstances of the overcharges revealed that the accounts of these three schools all resided within one Sodexo division, Corporate Services, rather than the division within Sodexo which specialized in school lunch service, School Services. As a result of the OAG Investigation, these accounts were subsequently transferred to the School Services Division.
23. In furtherance of the OAG Investigation, at the expense of, and with the full cooperation of Sodexo, an independent review of kindergarten through 12th grade schools in New York that received food service from Sodexo was conducted by an Independent Consultant.
24. The Independent Consultant was retained to assist in determining if Sodexo client kindergarten through 12th grade schools were appropriately credited for vendor rebates received by Sodexo during the Relevant Period.
25. The Independent Consultant examined the records of the schools and school districts referred to above. Thirty of the New York schools tested were Qualifying K-12s. The remaining five did not receive government school lunch subsidies.
26. The Independent Consultant applied procedures to determine whether the Qualifying K-12 schools were properly credited for vendor rebates received by Sodexo in connection with the Qualifying K-12's \$34 million in food purchases during the Relevant Period.



27. The Independent Consultant concluded that during the Relevant Period, Sodexo failed to credit the Qualifying K-12s for hundreds of thousands of dollars in rebates, though the great majority of the un-credited rebates were attributable to school accounts which were managed by Sodexo's Corporate Services Division.
28. In addition, OAG reviewed agreements between Sodexo and New York governmental entities and other non-profit entities.
29. A review of these agreements revealed that in at least one instance, Sodexo failed to disclose and credit the SUNY system for off-invoice rebates under circumstances where OAG contends it was improper to retain them.

### III. Terms and Conditions

30. Sodexo neither admits nor denies the Findings of the OAG Investigation, but disputes Relators' allegations contained in the qui tam Complaint filed in the District of Massachusetts.
31. This Agreement is not an admission of liability by Sodexo, nor is it evidence of any valid claim. The parties agree that no provision of this Agreement nor any consideration exchanged pursuant to this Agreement constitutes an admission by Sodexo that it violated any law or the terms of any agreement.
32. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation and continued investigation relating to the Qui Tam Action and OAG Investigation, the Parties desire a final negotiated settlement and compromise of their disputes, as more fully set forth herein.
33. The Parties have determined and hereby agree that settlement is in each of their best interests, and the OAG has agreed to accept the terms of this Agreement and discontinue the OAG Investigation of Sodexo's rebating practices with respect to its food service and facilities management business during the Relevant Period.
34. The State contends that, as a result of OAG's Findings, it has certain civil claims against Sodexo under the New York State False Claims Act (N.Y. Fin. Law §§189 et seq.), other New York statutes and the common law, as specified in paragraph 42 below, during the Relevant Period:

a) Sodexo failed to disclose, and pass through, off-invoice rebates to Qualifying K-12 schools as required by New York State form contracts; and

b) Sodexo failed to disclose, and pass through, off-invoice rebates to institutions of higher learning within the SUNY system (collectively, the "Covered Conduct").

35. Within twenty (20) days of the full execution of this Agreement, Sodexo will pay the State of New York the sum of twenty million U.S. dollars (\$20,000,000) to resolve the Qui Tam Action and the OAG Investigation. Sodexo agrees to pay this sum by electronic funds transfer pursuant to written instructions to be provided by the State of New York.
36. The payment of this amount may be reduced by amounts previously paid by Sodexo, to wit, five hundred and fifty one thousand, nine hundred and twelve U.S. dollars (\$551,912).

#### IV. Disclosure

37. Sodexo shall disclose in all future management fee and profit-split contracts with New York's kindergarten through 12th grade schools, governmental and non-profit clients that they receive rebates, and whether they will pass them through or retain them. Additionally, for two years, Sodexo shall disclose to its kindergarten through 12th grade schools and school districts that it receives off-invoice rebates in connection with client purchases in the form attached hereto as Schedule B.

#### V. Independent Consultant

38. As part of this Agreement, Sodexo shall engage an "Independent Consultant," upon the terms set forth in Schedule A, who shall examine Sodexo's pass-through of rebates to New York State kindergarten through 12th grade schools. The engagement of the Independent Consultant shall be for and correspond to Sodexo's fiscal year for 2010, 2011, and 2012.
39. Except as set forth below, Sodexo shall not be required to pay more than \$100,000, plus reasonable expenses, annually to the Independent Consultant for their services.

40. In the event the Independent Consultant believes that a matter involving the possible improper retention of rebates by Sodexo warrants additional inquiry that will result in fees exceeding the limitation set forth in the preceding paragraph, the Independent Consultant shall inform OAG, and OAG shall meet and confer with counsel for Sodexo regarding the matter. OAG shall inform counsel for Sodexo of the general nature of the inquiry and OAG and counsel for Sodexo shall agree on additional fees to be paid by Sodexo to the Independent Consultant. In no event shall those fees exceed an additional \$50,000 per year.
41. Sodexo's obligations and representations concerning the Independent Consultant are explicit conditions precedent to the administrative forbearances and relief granted by the State herein, and, in the event it violates such conditions, the State will be relieved of the obligations set forth herein as to Sodexo, and may pursue all remedies otherwise available under the law. Notwithstanding such violations and action by the State, Sodexo's obligations hereunder will remain in full force and effect.

#### VI. Releases

42. In consideration of the obligations incurred by Sodexo herein, the State agrees to release Sodexo (including all current and former officers, directors, and employees) from any civil monetary claim arising from the Covered Conduct and the OAG Investigation during the Relevant Period, that the State has or may have against Sodexo under the New York False Claims Act, Executive Law § 63(12) or any other New York statute, or common law, under any theory in law or equity, including equitable theories of payment by mistake, disgorgement, unjust enrichment, breach of contract or fraud.
43. Sodexo fully and finally releases OAG, as well as all other New York State entities, agencies, employees, attorneys, servants, and agents ("New York Release Parties") from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Sodexo has asserted, or could have asserted, or may assert in the future against the New York Release Parties, related to the Covered Conduct and the OAG's Investigation.

44. Conditioned upon receipt of the full payments as provided in paragraphs 35, 36, 49, and 50, the Relators, for themselves individually, and for their heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, agree to fully and finally release, waive and forever discharge Sodexo, from any and all rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions and causes of action of any nature (including attorneys fees, costs, and expenses of every kind and however denominated), whether known or unknown, suspected or unsuspected, in law or in equity, that Relators have, or at any time heretofore may have had against Sodexo from the beginning of the world until the date of this Agreement, including, without limiting the generality of the foregoing, all claims that Relators could have asserted, or may assert in the future against Sodexo in any jurisdiction under any applicable law, arising out of the facts and circumstances at issue in the OAG Investigation and in the Qui Tam Action.
45. Upon the Court's dismissal of the Qui Tam Action, Sodexo fully and finally releases, waives, and forever discharges Relators, their heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns from any and all rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions and causes of action of any nature (including attorneys fees, costs and expenses of every kind and however denominated), whether known or unknown, suspected or unsuspected, in law or in equity, that Sodexo has asserted, could have asserted, or may assert in the future against Relators their heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, in any jurisdiction under any applicable law, arising out of the facts and circumstances at issue in the OAG investigation and in the Qui Tam Action.

46. Conditioned upon receipt of the full payments as provided in paragraph 49 pertaining to the Relators' share, the Relators, for themselves individually, and for their heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, agree to fully and finally release, waive and forever discharge the State of New York and its officers, agents, and employees, from any and all rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions and causes of action of any nature (including attorneys fees, costs, and expenses of every kind and however denominated), whether known or unknown, suspected or unsuspected, in law or in equity, that Relators have asserted, could have asserted, or may assert in the future against the State in any jurisdiction under any applicable law, arising out of the filing of the Qui Tam Action, and from any other claims for a share of the Settlement Proceeds.
47. Upon the Court's dismissal of the Qui Tam Action, the State fully and finally releases, waives and forever discharges Relators, their heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns from any claims related to the Qui Tam Action. This Agreement does not resolve or in any manner affect any claims the United States, the State, the Commonwealth of Massachusetts or the State of Texas may have against the Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any equivalent New York, Massachusetts or Texas statute, or any claims arising under this Agreement.

#### VII. Miscellaneous

48. All correspondence related to this Agreement must reference the above caption and reference number 10-037.
49. Contingent upon OAG receiving the amount set forth in paragraph 35 from Sodexo, and within thirty (30) days after the OAG's receipt of such payment, OAG agrees to pay Relators three million, six hundred thousand U.S. dollars (\$3,600,000). This payment is intended for the payment of the Relators' Share as authorized under New York State Finance Law § 190(6) of the New York False Claims Act, and this payment is made pursuant to that section. Such payment shall be made through electronic transfer to a trust account for Relators, through their counsel, in accordance with written instructions to be provided by their counsel.

50. Within twenty (20) days of the full execution of this Agreement, Sodexo will pay counsel for Relators, Phillips & Cohen LLP, the sum of four hundred and fifteen thousand U.S. dollars (\$415,000) for full payment of all attorneys' fees, costs and expenses in the Qui Tam Action pursuant to New York State Finance Law § 190(7) of the New York False Claims Act. Sodexo agrees to pay this sum by electronic funds transfer pursuant to written instructions to be provided by counsel for Relators, Phillips & Cohen LLP.
51. The State has agreed to the terms of this Agreement based on, among other things, the representations made to OAG by Sodexo and its counsel and OAG's own factual investigation as set forth in the Findings above. To the extent that any material representations are later found to be inaccurate or misleading, this Agreement is voidable by OAG in its sole discretion. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Sodexo in agreeing to this Agreement. Sodexo represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
52. Sodexo represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved, and execution of this Agreement is duly authorized. Sodexo shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis. Nothing in this paragraph affects Sodexo's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.
53. This Agreement is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Sodexo.
54. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

55. The individuals signing this Agreement on behalf of Sodexo represent and warrant that they are authorized by Sodexo to execute this Agreement. The individual(s) signing this Agreement on behalf of Relators represent and warrant that they are authorized by Relators to execute this Agreement. The State of New York signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.
56. Within five (5) business days after receipt of the payments from Sodexo set forth in paragraphs 35, 36, 49, and 50 above, the State and Relators shall file a Joint Stipulation of Dismissal pursuant to Fed. R. Civ. P. 41(a): (1) dismissing the claims for the Covered Conduct in the Qui Tam Action with prejudice as to the State and Relators, and (2) dismissing all remaining claims on behalf of the State against Sodexo without prejudice as to the State and with prejudice as to the Relators.
57. Within five (5) business days of Relators' receipt of the payments set forth in paragraph 49 and 50, Relators shall file a Joint Stipulation of Dismissal and Proposed Order in the Qui Tam Action dismissing Relators' claims in the Qui Tam Action with prejudice and dismissing the claims of the United States, the Commonwealth of Massachusetts and the State of Texas in the Qui Tam Action without prejudice.
58. This Agreement may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement.
59. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights obligations under this Agreement without the prior written consent of OAG.
60. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

61. All communications from any party concerning the subject matter of this Agreement and be addressed as follows:

Counsel for Sodexo, Inc. and Sodexo SA

Martin F. Gaynor III, Esq.  
Cooley Manion Jones LLP  
21 Custom House Street  
Boston, Massachusetts, 02110

Scott E. Mollen, Esq.  
Herrick, Feinstein LLP  
2 Park Avenue  
New York, New York 10016

Of Counsel for New York

Assistant Attorney General John F. Carroll  
Office of the Attorney General of the State of New York  
Criminal Justice Division, Public Integrity Bureau  
120 Broadway  
New York, New York 10271

Counsel for Relators

Colette G. Matzzie, Esq.  
Timothy McCormack, Esq.  
Phillips & Cohen LLP  
2000 Massachusetts Ave., NW  
Washington, DC 20036

62. Acceptance of this Agreement by OAG shall not be deemed or construed as an approval by OAG of any of the practices or procedures referenced herein, and Sodexo shall make no representation to the contrary.
63. If a court of competent jurisdiction determines that Sodexo has breached this Agreement, Sodexo shall pay to OAG the cost, if any, of such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.
64. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the Supreme Court of the State of New York, New York County.



65. Nothing contained herein shall be construed so as to deprive any non-Party of any private right under the law.
66. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
67. After the conclusion of the OAG Investigation, the State will return to counsel for Sodexo, or destroy, all Sodexo documents concerning the Qui Tam Action and the OAG Investigation, including reports, documents and data produced electronically, and provide a certification of said destruction, at Sodexo's expense, unless inconsistent with the State's Freedom of Information Law (NYS Public Officer's Law, Art. 6, §§ 84-90).
68. Sodexo shall retain for a period of one year a set of all produced documents in electronic media conforming to OAG's Concordance load format, to be provided to OAG within five (5) business days of receiving written notice from OAG should OAG require the documents for investigative purposes, to be determined in OAG's sole discretion.
69. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitutes one and the same agreement.


IN WITNESS WHEREOF, this Agreement is executed by the parties hereto.

ANDREW M. CUOMO, ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

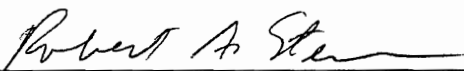
Dated: 6/10/10

By:   
John F. Carroll  
Assistant Attorney General


Dated: 6/10/10

  
Debbie White  
Chief Financial Officer  
Sodexo, Inc.

Dated: 6/10/10

  
Robert A. Stern  
Authorized Representative  
Sodexo SA

Dated: 6/10/10

  
Robert A. Stern, Esq.  
Senior Vice President and  
General Counsel  
Sodexo, Inc.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Estate of Relator Jay Carciero

Dated: \_\_\_\_\_

\_\_\_\_\_  
Relator John Carciero

Dated: \_\_\_\_\_

\_\_\_\_\_  
Colette G. Matzzie, Esq.  
Timothy McCormack, Esq.  
Phillips & Cohen LLP


Dated: \_\_\_\_\_

Robert A. Stern  
Authorized Representative  
Sodexo SA

Dated: \_\_\_\_\_

Robert A. Stern, Esq.  
Senior Vice President and  
General Counsel  
Sodexo, Inc.

Dated: 6-10-10

  
Estate of Relator Jay Carciero

Dated: 6-10-10

  
Relator John Carciero

Dated: \_\_\_\_\_

Colette G. Matzzie, Esq.  
Timothy McCormack, Esq.  
Phillips & Cohen LLP

Dated: \_\_\_\_\_

Robert A. Stern  
Authorized Representative  
Sodexo SA

Dated: \_\_\_\_\_

Robert A. Stern, Esq.  
Senior Vice President and  
General Counsel  
Sodexo, Inc.

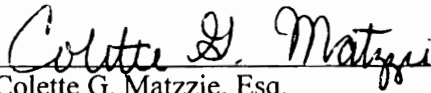
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Estate of Relator Jay Carciero

Dated: \_\_\_\_\_

Relator John Carciero

Dated: \_\_\_\_\_

  
Colette G. Matzzie, Esq.  
Timothy McCormack, Esq.  
Phillips & Cohen LLP

**Schedule A**  
**Independent Consultant Terms**

This document sets forth the terms of the agreement by which Sodexo, Inc. (“Sodexo”) agree to engage the Independent Consultant (“IC”) referred to in the Settlement Agreement above.

1. This document, together with paragraphs 38 through 41 of the Settlement Agreement, and the prior engagement agreement dated August 17, 2009, constitutes the entirety of the understanding between the Office of the Attorney General of the State of New York (“OAG”) and Sodexo concerning the IC. No modification, deletion or addition to the IC Agreement is valid or binding on any party unless written and signed by both parties.
2. Sodexo and OAG previously selected Robin A. Cramer, CPA, of Bender, Ciccotto & Co., CPA’s LLP, to serve as IC to conduct an examination and to report on Sodexo’s rebating procedures.
3. The parties hereby agree to continue this engagement of Robin A. Cramer, CPA for an additional period of three years corresponding to Sodexo’s fiscal years for 2010, 2011, and 2012.
4. Sodexo hereby agrees to budget \$100,000 per year for the duration of the engagement of the IC.
5. The agreement entered into between the IC and Sodexo shall be substantially in the form of the prior engagement agreement dated August 17, 2009.
6. IC shall examine Sodexo’s pass-through of rebates to all of its New York kindergarten through 12th grade school and school district clients, that participate in the National School Lunch Program, or otherwise where a client contract so requires (“New York K-12s”).

7. The IC shall review information that is reasonably necessary to accomplish the purposes set forth in paragraph 6 above. Sodexo shall fully cooperate with the IC, allowing the IC unfettered access to all information requested to be reviewed or examined by the IC.
8. Access shall include access to employees, offices, work sites, computer systems, books and records, internal accounting and systems manuals. Satisfactory cooperation and compliance with this paragraph shall be determined solely by OAG.
9. The IC's duties shall be as follows:
  - a. IC shall meet and confer with Sodexo to consider implementation of the findings and recommendations in the report of Bender, Ciccotto & Co., CPA's LLP.
  - b. IC shall continue to review Sodexo rebating practices utilizing substantially the same methodology set forth in the agreement dated August 17, 2009.
  - c. IC shall meet and confer with Sodexo to consider creation of a code of business conduct concerning rebates in connection with New York K-12s.
  - d. IC shall establish a toll-free 1800 number available to New York K-12 clients for the purpose of responding to questions concerning rebates.
  - e. IC shall issue annual reports on all of the above-specified activities to OAG and Sodexo.
  - f. IC shall, upon request of OAG, provide OAG with information and/or reports related to all of the above-specified activities.

**Schedule B**  
**Model Client Disclosure Concerning Rebates**

Dear [Client Contact]:

The New York Attorney General's Office (NYAG) is conducting an investigation into the food service and facilities management industry and its practice of obtaining rebates from vendors. Sodexo fully cooperated with the investigation, and NYAG has completed its examination of Sodexo's conduct in this arena.

Since the investigation with respect to Sodexo is now complete, we wish to take this opportunity to discuss and explain supplier rebates and their role in Sodexo's business.

Food service and facilities management companies (Management Companies) like Sodexo receive rebate payments from vendors and suppliers from which we purchase goods on your behalf. These vendors and suppliers often provide Management Companies these rebates as part of the overall procurement arrangement they have entered into with the Management Company.

We have retained (at no cost to you) an independent consultant, Robin A. Cramer, CPA, of Bender, Ciccotto & Co., CPA's LLP ("Bender, Ciccotto"), who recently completed a review of the rebates earned at your account to ensure that the proper amounts were credited to you pursuant to the terms of your contract with Sodexo. We have also retained Bender, Ciccotto to perform similar reviews of your account through 2012 to ensure that you continue to receive the appropriate rebate credits. If you have any questions about rebates you are also welcome to call Bender, Ciccotto at (800) xxx-xxxx. You are also, as always, welcome to contact your Sodexo client representative with any questions or comments you may have with respect to rebates or any other matter.